

PROTECTION OF MARINE ENVIRONMENT: WHOSE RESPONSIBILITY?

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ABSTRACT

Marine environment include the oceans and all seas and adjacent coastal areas that form an integrated whole that is an essential component of the global life-support system and a positive asset that presents opportunities for sustainable development. Pollution of the marine environment is the introduction by man, directly or indirectly of substance or energy into the environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities. This study examined the question of who is responsible for the protection of the marine environment. It employed a descriptive research methodology; and the research findings indicate that the major threats to health, productivity and biodiversity of marine environment result from human activities on land, in coastal areas and further inland. The protection and prevention is the cornerstone of any sound environmental management programme and the most economic and effective means of limiting the adverse environmental consequences of oil pollution incidents from ships. Accordingly, the ship-owner's responsibility of protecting the marine environment is embedded in the concept of seaworthiness at the initial stage of the contract agreement with the charterer.

Keywords: Marine environment, Pollution, sea water

INTRODUCTION

Marine environment is defined by the United Nation's Convention on the Law of the Sea (UNCLOS), specifically in Agenda 21: Chapter 17, to include the oceans and all seas and adjacent coastal areas that form an integrated whole that is an essential component of the global life-support system and a positive asset that presents opportunities for sustainable development. The major threats to health, productivity and biodiversity of marine environment result from human activities on land, in coastal areas and further inland. UNCLOS addresses six main sources of ocean pollution which include land-based and coastal activities, continental-shelf drilling, potential sea-bed mining, ocean dumping, and vessel-source pollution and pollution from or through the atmosphere. UNCLOS in Article 1 (1) (4) defines pollution of the marine environment as the introduction by man, directly or indirectly, of substance or energy into the environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

The aim of this study was to examine the question of who is responsible for the protection of the marine environment. The work adopted a charterer using the Government of Philippines, the jurisdictional zone where Solar 1 (Oil Tanker) in Nueva Valencia which sunk with 450,000 gallons of oil on board as a case study. The study also aimed at highlighting the international cooperation agreements in existence for the protection of the marine environment in the waters of South-East Asia that may likely be solicited to assist in the Nueva Valencia disaster.

The obligation of protecting the marine environment

The protection and prevention is the cornerstone of any sound environmental management programme and the most economic and effective means of limiting the adverse environmental consequences of oil pollution incidents from ships (Horrocks 2006). At the end of the IMO/UNEP Forum on Regional Co-operation in Combating Marine Pollution held in May 2006, one of the findings is that successful and sustainable marine environment protection relies on many factors with "shared responsibility" among the various partners, regional and international organizations, United Nation (UN) agencies, stakeholders at the national, regional and international levels. One of the commendations of the forum is that Regional Seas Programmes and relevant stakeholders (IMO, UNEP, and industry) should continue to develop activities that are action-orientated, cost-effective, with tangible deliverables that are beneficial to all stakeholders; and that such programmes should be developed with clear performance indicators to demonstrate effectiveness.

Responsibilities of parties in the disaster

The ship-owner's responsibility is embedded in the concept of seaworthiness at the initial stage of the contract agreement with the charterer. Davies and Dickey (2004) observe that if a ship becomes unseaworthiness during the charter period, the ship-owner has a duty to correct the condition, and that the ship-owner will be liable to pay damages for unseaworthiness. Also Article 3.1 of the Civil Liability Convention 1992 (CLC92) provides that the owner of a ship, at the time of an incident or where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident. Although the owners' liability for pollution damage is strict, subject to some narrowly confined defences, which are contained in Article 3.4 of the CLC92 Act.

The charterer of Solar 1 has the duty of care, by ensuring that the ship was in good condition, seaworthy has qualified crew (STCW '95 & SOLAS 74) and was properly insured with the Protection and Indemnity Clubs (P & I Club) at the time of the contract agreement. Although Anantharman (2006) argues that a P & I Club assist a ship-owner in dealing with every aspect of a disaster from finding experts and contractors to deal with the immediate casualty through to legal advice and paying claims. It should be noted that accidents are very expensive to all parties involved, although, the charterer responsibilities' may also depend on the form of contract agreement. Davies and Dickey (2004) also observed that the employment

of the ship and responsibility for cargo (oil on board Solar 1) during the charter period is that of the charterer. The ship-owner agrees to provide the services of its ship (Solar 1), master and crew to carry the goods, but the commercial decisions about what cargoes are to be carried on what voyages are made by the charterer. The charterer should have the 'shared responsibility' of managing the disaster caused by Solar 1, so as to best reduce, limit and eradicate the threatened damage to the marine environment of Nueva Valencia in the Philippines.

The Government of Philippines should have a standing contingency plan in terms of search and rescue against such emergency occurrences like the oil disaster caused by Solar 1 on her jurisdictional zone. Although under the CLC92, countries where oil spills occur, the clean-up operation will be conducted by the appropriate government agencies where such disaster occurs and in USA by the ship-owner. Every Coastal State is granted jurisdiction under UNCLOS for the protection and preservation of the marine environment of its Exclusive Economic Zone (EEZ). The government of Philippines may seek assistance from the international convention on the establishment of an international fund for oil pollution damage (known as the 1992 Fund Convention); the international convention relating to intervention on the high seas in cases of oil pollution casualties 1967, as amended by a protocol of 1973 (known as the Intervention Convention); the 1996 protocol to the convention on the prevention of marine pollution by dumping of wastes and other matter 1972 (known as the Dumping Convention Protocol); and the IMO oil pollution preparedness response and cooperation convention, also known as the OPRC Convention. Technical and financial assistance may be gotten from the above cited bodies by the appropriate government agencies in the Philippines in order to manage the disaster caused by Solar 1, so as to best reduce or limit or eradicate the threatened damage to the environment.

Recently, the biggest oil pollution in US cutting across the Gulf of Guinea in the State of Louisiana occurred. The disaster results in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities generally for the citizens of the American living in the region where affected. Kennedy (2010) reports that the oil slick became the nation's worst environmental disaster in decades, threatening hundreds of species of fish, birds and other wildlife along the Gulf Coast, one of the world's richest seafood grounds, teeming with shrimp, oysters and other marine life.

While Merlynne (2011) also reported that on April 20, 2010 Deep Water Horizon, a Transocean deep sea drilling rig - working for British Petroleum (BP) in the Gulf of Mexico on the Macondo Prospect, which is located on the Mississippi Canyon Block 252, 48 miles from the coast of Louisiana - caught fire, burned fiercely for 36 hours and then sank in 5,000' of water. Eleven oil rig workers died and several others were severely injured. The flames from the rig fire were 200-300 feet high and visible from a distance of 35 miles when the fire was its height. This accident

produced the largest oil slick in American history, perhaps the largest such disaster anywhere in the history of the oil industry. Oil was leaking out at 200,000 gallons per day (Kennedy 2010). The environmental mess could be larger than the 1989 Exxon Valdez disaster, when an oil tanker spilled 11 million gallons off Alaska's shores. Accordingly, BP owners of the leaked oil rigs took responsibility of cleaning-up and also paid huge sum of Millions of Dollars as compensation to the American State and citizens respectively.

International Cooperation for the Protection of the Marine Environment

Bogaert (2004) argues that South-East Asia has one of the richest and most varied natural environments in the world, and the use of natural resources has a big part in the well-being of its people and nation. Unfortunately, this region is vulnerable to man-made and natural disasters, such as earth quakes, droughts, floods, and oil spillages, which are made more devastating by the destruction of the marine environment. For these reasons the leaders of the Association of South-East Asia Nations (ASEAN) view the protection of the environment and the sustainable use and management of the natural resources as essential to the long-term economic growth of their countries and the region.

ASEAN's earliest initiative on environmental cooperation was the ASEAN Sub-regional Environmental Programme (ASEP, 1977). This set the framework for regional cooperation in terms of priorities, specific projects and day-to-day activities (Bogaert 2004). The ASEAN Summit Meeting in 1992, in Singapore, pledges 'to play an active part in protecting the environment by continuing to cooperate by promoting the principle of sustainable development and integrating it into all aspects of development'. At the sixth ASEAN Summit in Vietnam in December 1998, a declaration was made: 'so as to ensure the sustainability of our nations' development, the protection of the environment shall be an essential part of our economic activities. We shall consolidate and expand our gains in the control and prevention of transboundary pollution, especially the hazards arising from land and forest fires'. This declaration gave rise to some objectives for the environment cooperation enunciated in the Haze Noi (in Vietnam) Plan of Action issued at the summit. Some of the objectives of the strategic plan of action are:

- Carry out the ASEAN Cooperation Plan on Transboundary pollution with emphasis on the Regional Haze Action Plan by the year 2001;
- Draw up and adopt an ASEAN Protocol on access to genetic resources by the year 2004;
- Develop a framework and improved regional coordination for integrated protection and management of coastal zones by the year 2001;
- Develop a regional Action Plan for the Protection of the Marine Environment from Land-based and Sea-based Activities by the year 2004;
- Carry out the framework to achieve the long-term environmental goals for ambient Air and River Qualities for ASEAN countries, amongst other objectives respectively.

Phillips (2006) observes that in February 1999, ASEAN established the Regional Centre for Biodiversity Conservation with financial support from the European Union, Housed in Los Banos, The Philippines. The aim is to intensify regional cooperation on biodiversity conservation. It also serves as a focal point for networking and institutional linkage among the member countries and between ASEAN and the EU partner organizations. Through the centre, ASEAN has so far established National Biodiversity Reference Units to coordinate and carry out national activities on biodiversity, in seven member countries (Brunei, Darussalam, Indonesia, The Philippines, Singapore, Thailand and Vietnam).

The ASEAN Working Group on Coastal and Marine Environment has also identified the following areas in its cooperation framework for integrated protection and management of coastal zones: coral reef, sea grass and mangrove, oil sludge from tankers and ballast waters; management of solid and liquid waste, coastal erosion, ecotourism; and coastal wetlands, including protected marine areas. ASEAN has in place a regional action plan for coastal and marine surveillance of illegal discharges, using a region-wide community-based surveillance mechanism (Bergin and Haward, 1999). ASEAN also subscribed to multilateral environmental agreements such as the 1992 UN Conference on Environmental and Development (Earth Summit) and Convention on Biological Diversity and the Framework Convention on Climate change.

ASEAN countries also subscribed to the Declaration of the Principles of the Summit and contribute to Agenda 21, and have their national plans to carry out the Agenda. Presently ASEAN is concentrating on the following multilateral agreements which are of regional importance: Montréal Protocol on Substances that Deplete the Ozone Layer, The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and its Disposal, United Nations Framework Convention on Climate Change and the Kyoto Protocol; Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (The Rotterdam Convention), and International Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (Phillips, 2006).

Rickably (2006) at IMO/UNEP forum on regional cooperation in combating marine observes that 'pollution has recently set the backdrop for more specific themes that would follow by providing an overview of the OPRC Convention, as the international instrument which provides the essential framework and provisions for preparedness, response and cooperation of marine oil spills from ships, such as the Solar 1 incident'. This initial presentation was followed by presentations on various regional initiatives and instrument for protection of the marine environment and cooperation, when incidents occur.

The role of Regional Activity Centres (RAC's) in implementing regional cooperation was also strengthened at the IMO/UNEP forum. Some of the key issues emerging were that the presence of an RAC can significantly enhance preparedness

and regional cooperation, but can often have difficulties in establishing sustainable long-term financing for their operations. Experienced leadership, neutrality, strong political will and a commitment to sustainable financing paired with fundraising initiatives were some of the identified requirements to ensure success. In view of the numerous cited literatures above on the international cooperative agreements in existence for protection of the marine environment in the waters of South-East Asia, this report submits that there are enough cooperative agreements to trigger for the assistance of the Solar 1 disaster in Nueva Valencia in the Philippines.

CONCLUSION

The study in taking refuge in UNCLOS Agenda 21: Chapter 17, and in Article 1(1) (4), and also in view of the recent findings of IMO/UNEP cited above, consequently submits that the protection of the marine environment and specifically the marine environment in which the Solar 1 (Nueva Valencia) disaster occurs is the problem of all stakeholders and the relevant parties in this incident, that is, the ship-owners, the charterer, and the Philippine's Government in whose jurisdiction the disaster occurred. The protection and prevention is the cornerstone of any sound environmental management programme and the most economic and effective means of limiting the adverse environmental consequences of oil pollution incidents from ships. In this wise, the ship-owner's responsibility of protecting the marine environment is embedded in the concept of seaworthiness at the initial stage of the contract agreement with the charterer.

The goals of the Ocean Policy include the promotion of ecologically sustainable development and job creation and promotion of public awareness and understanding. Therefore, a focus on marine environmental protection is not necessarily at the expense of balanced exploitation uses of the sea. The goals of the Ocean Policy include the promotion of ecologically sustainable development and job creation and promotion of public awareness and understanding. This study therefore submits that the owner of the Solar 1 will be responsible for removing her wreckage, safety of the crew onboard the cleaning-up of the environment, and payment of compensation for the damage done to all appropriate affected parties in order to ameliorate, reduce, limit, and manage the havoc caused by the disaster of Solar 1 in Nueva Valencia.

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